

OCT 17 2008

ROBERT H. SHENKEL, CLERK
BY 1AM
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

ELIAS MASHABA : DOCKET NO. 2:08-cv-573
SECTION P

VS. : JUDGE MINALDI

MICHAEL MUKASEY, ET AL. : MAGISTRATE JUDGE KAY

ORDER SETTING EVIDENTIARY HEARING AND APPOINTING COUNSEL

It has been determined that an evidentiary hearing is necessary for the adjudication of the above-captioned *habeas corpus* petition filed by Elias Mashaba pursuant to 28 U.S.C. § 2241. In accordance with a standing order of this court, this matter has been referred to Magistrate Judge Kathleen Kay to hold the required evidentiary hearing and make a report and recommendation.

The evidentiary hearing is scheduled for **November 21, 2008 at 10:00 a.m.** At that time, the Court will hear testimony of witnesses and receive evidence on the following issues: whether there is a significant likelihood of removing petitioner in the reasonably foreseeable future; whether petitioner has been detained beyond what is reasonably necessary to secure his removal; and whether petitioner has taken steps to hamper the removal efforts of the United States Immigration & Customs Enforcement.

IT IS ORDERED than an evidentiary hearing will be held in this action before Magistrate Kay in Courtroom 3 of the Edwin F. Hunter, Jr. Federal Courthouse, 611 Broad Street, Lake Charles, Louisiana, on **November 21, 2008 at 10:00 a.m.**

IT IS FURTHER ORDERED that the Federal Public Defender for the Western District of Louisiana is hereby appointed to represent the petitioner, Elias Mashaba, at said hearing pursuant to 18 U.S.C. § 3006A.

IT IS FURTHER ORDERED that no later than **November 14, 2008** each party shall file a pretrial statement with the Clerk of Court. Each pretrial statement shall identify the issues of fact and law, include a brief memorandum describing the parties' positions with respect to the issues of fact and law, list the witnesses to be called at the hearing and exhibits to be introduced into evidence. Each exhibit listed in the pretrial statement shall be sufficiently described so that it can be identified as the listed item at the time of the hearing. Copies of all exhibits that are capable of being photocopied shall be provided to the opposing party no later than **November 7, 2008**. If the authenticity of any such exhibit is disputed, a list of the disputed exhibits, and the reason for the dispute, shall be stated as part of the pretrial statement.

No exhibit or witness (except those used for impeachment purposes) shall be used at the hearing over objection unless listed in the pretrial statement, except for good cause shown. A party may call a witness listed by another party, but no party should rely on the opposing party to produce a particular witness at the hearing. Rule 45 of the Federal Rules of Civil Procedure must be followed with regard to the issuing of subpoenas for witnesses or documents.

IT IS FURTHER ORDERED that the Clerk of Court issue a *Writ of Habeas Corpus Ad Testificandum* to Warden J. P. Young at the Federal Detention Center in Oakdale, Louisiana, requiring that petitioner Elias Mashaba be delivered and produced at the Edwin F. Hunter, Jr. Federal Courthouse, 611 Broad Street, Courtroom 3, Lake Charles, Louisiana on **November 21, 2008** prior to the **10:00 a.m.** evidentiary hearing.

IT IS FURTHER ORDERED that the Clerk of Court send copies of this Order and the accompanying *Writ of Habeas Corpus Ad Testificandum* to petitioner, all counsel of record, Warden J. P. Young, and the United States Marshal for the Western District of Louisiana.

THE UNITED STATES MARSHAL'S SERVICE IS DIRECTED to make arrangements with the appropriate authorities to transport the petitioner to this court as soon as practicable, to produce him before the undersigned on November 21, 2008 at 10:00 a.m. and to maintain custody of the petitioner throughout the evidentiary hearing, up to and including the return of petitioner to his place of detention following the conclusion of the evidentiary hearing.

IT IS FURTHER ORDERED that the Clerk of Court make arrangements for the presence of a court reporter at the evidentiary hearing.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 17th day of
October, 2008.

COPY SENT

DATE 10/20/08

BY PAM

TO FPD

warden
whittington
washington
usm
mukasey
m.frye
thompson

KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE